

STATUS OF PENDING EN BANC CASES

Today's Date: September 26, 2011

This report is provided for case identification and background information only and does not reflect the views of the court. When a case is heard or reheard en banc, the en banc court assumes jurisdiction over the entire case, see 28 U.S.C. § 46(c), regardless of the issue or issues that may have caused any member of the Court to vote to hear the case en banc. Summerlin v. Stewart, 309 F.3d 1193 (9th Cir. 2002)

Karuk Tribe of California v. United States Forest Service, 05-16801

Three-Judge Panel Opinion: 640 F.3d 979 (9th Cir. 2011)

Order Taking Case En Banc: 2011 WL 4014330 (9th Cir. September 12, 2011)

Date of Order Taking Case En Banc: September 12, 2011

Status: To be calendared the week of December 12, 2011, in San Francisco California.

Members of En Banc Court: Not yet available

Subject Matter: Appeal by the Karuk Tribe of California of the district court's judgment in favor of the United States Forest Service in the Tribe's action challenging mining operations in the Klamath National Forest.

Holding: Not yet decided

United States v. Milovanovic, 08-30381

Three-Judge Panel Opinion: 627 F.3d 405 (9th Cir. 2010)

Order Taking Case En Banc: 2011 WL 3691853 (9th Cir. August 24, 2011)

Date of Order Taking Case En Banc: August 24, 2011

Status: To be calendared the week of December 12, 2011, in San Francisco California.

Members of En Banc Court: Not yet available

Subject Matter: Appeal by the United States of the district court's dismissal of an indictment before trial for honest services mail fraud.

Holding: Not yet decided

Young v. Holder, 07-70949

Three-Judge Panel Opinion: 634 F.3d 1014 (9th Cir. 2011)

Order Taking Case En Banc: 2011 WL 3250632 (9th Cir. July 29, 2011)

Date of Order Taking Case En Banc: July 29, 2011

Status: To be calendared the week of December 12, 2011, in San Francisco California.

Members of En Banc Court: Not yet available

Subject Matter: Petition for review from the Board of Immigration Appeals' decision finding petitioner removable based on his conviction for violating California Health & Safety Code § 11352(a).

Holding: Not yet decided

United States v. Ressam, 09-30000

Three-Judge Panel Opinion: 593 F.3d 1095 (9th Cir. 2010)

Order Taking Case En Banc: 2011 WL 3284485 (9th Cir. August 2, 2011)

Date of Order Taking Case En Banc: August 2, 2011

Status: Argued and submitted September 21, 2011

Members of En Banc Court: Kozinski, Schroeder, Reinhardt, Graber, McKeown,

Wardlaw, Paez, Berzon, Clifton, Bybee, Murguia

Subject Matter: Appeal by the United States of the sentence imposed on Ahmed Ressam, for his conviction on multiple charges relating to his attempt to smuggle explosives into the United States in connection with a terrorist plot.

Holding: Not yet decided

Native Village of Eyak v. Locke, 09-35881

Prior En Banc Court Order: *Eyak Native Village v. Daley*, 02-36155, 375 F.3d 1218 (9th Cir. 2004) (en banc)

Order Taking Case En Banc: 2011 WL (9th Cir. June 21, 2011)

Date of Order Taking Case En Banc: June 21, 2011

Status: Argued and submitted September 21, 2011

Members of En Banc Court: Kozinski, Schroeder, Pregerson, Kleinfeld, Hawkins, Thomas, W. Fletcher, Paez, Tallman, Rawlinson, Clifton

Subject Matter: Appeal by Native Villages on remand from this court in prior en banc appeal, from district court's judgment in favor of the Secretary of Commerce in plaintiffs' action challenging fishing regulations and alleging nonexclusive aboriginal hunting and fishing rights in the Outer Continental Shelf off the southern coast of Alaska.

Holding: Not yet decided

Price v. Stevedoring Services of America, 08-71719

Three-Judge Panel Opinion: 627 F.3d 1145 (9th Cir. 2010)

Order Taking Case En Banc: 2011 WL 3251481 (9th Cir. August 1, 2011)

Date of Order Taking Case En Banc: August 1, 2011

Status: Argued and submitted September 22, 2011

Members of En Banc Court: Kozinski, Schroeder, Reinhardt, O'Scannlain, Thomas, Silverman, W. Fletcher, Gould, Berzon, Bea, Murguia

Subject Matter: Petition for review from a decision of the Benefits Review Board determining petitioner's average weekly wage and maximum compensation rate.

Holding: Not yet decided

United States v. Pool, 09-10303

Three-Judge Panel Opinion: 621 F.3d 1213 (9th Cir. 2010)

Order Taking Case En Banc: 646 F.3d 659 (9th Cir. 2011)

Date of Order Taking Case En Banc: June 2, 2011

En Banc Order: 2011 WL 4359899 (9th Cir. September 19, 2011)

Date of En Banc Order: September 19, 2011

Status: Case dismissed as moot and remanded.

Members of En Banc Court: Kozinski, Pregerson, Rymer, Graber, W. Fletcher, Paez, Bea, M. Smith, Ikuta, N.R. Smith, Murguia

Subject Matter: Appeal by criminal defendant of district court order requiring him to submit to DNA testing as a condition of pretrial release.

Holding: The en banc court found the case moot based on Pool's guilty plea. The court dismissed the appeal, vacated the panel's opinion and the district court's and magistrate judge's orders, and remanded with instructions to dismiss.

United States v. Havelock, 08-10472

Three-Judge Panel Opinion: 619 F.3d 1091 (9th Cir. 2010)

Order Taking Case En Banc: 645 F.3d 1083 (9th Cir. 2011)

Date of Order Taking Case En Banc: May 9, 2011

Status: Argued and submitted June 21, 2011

Members of En Banc Court: Kozinski, Schroeder, B. Fletcher, Reinhardt, Wardlaw, Fisher, Berzon, Rawlinson, Callahan, Ikuta, N.R. Smith

Subject Matter: Appeal by criminal defendant convicted of mailing threatening communications to press organizations.

Holding: Not yet decided

Gonzalez v. State of Arizona, 08-17094

Three-Judge Panel Opinion: 624 F.3d 1162 (9th Cir. 2010)

Order Taking Case En Banc: 2011 WL 1651242 (9th Cir. April 27, 2011)

Date of Order Taking Case En Banc: April 27, 2011

Status: Argued and submitted June 21, 2011

Members of En Banc Court: Kozinski, Pregerson, Rymer, Graber, Berzon, Rawlinson, Clifton, Bybee, Ikuta, N.R. Smith, Murguia

Subject Matter: Appeal by Arizona residents and Indian tribes in consolidated actions challenging validity of state Taxpayer and Citizen Protection Act, requiring proof of citizenship to register to vote and proof of identification to vote in person at polls.

Holding: Not yet decided

United States v. Leal-Felix, 09-50426

Three-Judge Panel Opinion: 625 F.3d 1148 (9th Cir. 2010)

Order Taking Case En Banc: 641 F.3d 1141 (9th Cir. 2011)

Date of Order Taking Case En Banc: April 19, 2011

Status: Argued and submitted June 22, 2011

Members of En Banc Court: Kozinski, Schroeder, Graber, McKeown, Wardlaw, W. Fletcher, Paez, Rawlinson, M. Smith, Ikuta, N.R. Smith

Subject Matter: Appeal by criminal defendant that a citation for a traffic violation is an arrest countable for criminal history under the Sentencing Guidelines.

Holding: Not yet decided

Garcia v. Benov, 09-56999

Three-Judge Panel Opinion: Unpublished memorandum disposition: 395 Fed.Appx. 329 (9th Cir. 2010)

Order Taking Case En Banc: 636 F.3d 1174 (9th Cir. 2011)

Date of Order Taking Case En Banc: February 28, 2011

Status: Argued and submitted June 23, 2011

Members of En Banc Court: Kozinski, Pregerson, Rymer, Thomas, Graber, Wardlaw, W. Fletcher, Berzon, Tallman, M. Smith, Ikuta

Subject Matter: Appeal by an alien from the district court's denial of his petition for writ of habeas corpus challenging the Secretary of State's extradition decision.

Holding: Not yet decided

State of California v. Safeway, Inc., 08-55671

Three-Judge Panel Opinion: 615 F.3d 1171 (9th Cir. 2010)

Order Taking Case En Banc: 633 F.3d 1210 (9th Cir. 2011)

Date of Order Taking Case En Banc: February 11, 2011

En Banc Opinion: 2011 WL 2684942 (9th Cir. July 12, 2011)

Date of En Banc Opinion: July 12, 2011

Status: Affirmed the district court's judgment.

Members of En Banc Court: Kozinski, Schroeder, Reinhardt, Graber, McKeown, Fisher, Gould, Tallman, Rawlinson, Clifton, N.R. Smith

Subject Matter: Appeal by the State of California of the district court's judgment in the State's antitrust action against Safeway, Inc., and three other supermarket chains, alleging violation of the Sherman Act.

Holding: Grocers' agreement to share revenues during the term of a labor dispute was not exempt from the antitrust laws under the non-statutory labor exemption. Agreement did not warrant summary condemnation either as a per se violation of § 1 of the Sherman Act or under a truncated "quick look" antitrust analysis.

Lee v. Lampert, 09-35276

Three-Judge Panel Opinion: 610 F.3d 1125 (9th Cir. 2010)

Order Taking Case En Banc: 633 F.3d 1176 (9th Cir. 2011)

Date of Order Taking Case En Banc: February 8, 2011

En Banc Opinion: 2011 WL 3275947 (9th Cir. August 2, 2011)

Date of En Banc Opinion: August 2, 2011

Status: Reversed district court's denial of 28 U.S.C. § 2254 habeas corpus petition challenging jury conviction of sex abuse and sodomy, and remanded with instructions to dismiss the petition as untimely.

Members of En Banc Court: Kozinski, Schroeder, Pregerson, Thomas, McKeown, W. Fletcher, Paez, Berzon, Rawlinson, Clifton, M. Smith

Subject Matter: Appeal by the State of Oregon from the district court's grant of a state prisoner's 28 U.S.C. § 2254 habeas corpus petition.

Holding: A credible showing of "actual innocence" under *Schlup v. Delo*, 513 U.S. 298 (1995), constitutes an equitable exception to the limitations period established by the Anti-Terrorism and Effective Death Penalty Act.

Comite de Jornaleros v. City of Redondo, 06-55750

Three-Judge Panel Opinion: 607 F.3d 1178 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 1054 (9th Cir. 2010)

Date of Order Taking Case En Banc: October 15, 2010

En Banc Opinion: 2011 WL 4336667 (9th Cir. September 16, 2011)

Date of En Banc Opinion: September 16, 2011

Status: Affirmed the district court's summary judgment

Members of En Banc Court: Kozinski, Thomas, Graber, Gould, Berzon, Bybee, Callahan, Bea, M. Smith, Ikuta, N.R. Smith

Subject Matter: Appeal of district court's summary judgment in day laborers' First Amendment challenge to ordinance prohibiting solicitation of business on streets and highways.

Holding: The ordinance is a facially unconstitutional restriction on speech which failed

to satisfy the narrow tailoring element of the Supreme Court's "time, place, and manner" test. Solicitation of business or employment constitutes protected expression under the First Amendment.

Mattos v. Agarano, 08-15567

Three-Judge Panel Opinion: 590 F.3d 1082 (9th Cir. 2010)

Order Taking Case En Banc: 625 F.3d 1132 (9th Cir. 2010)

Date of Order Taking Case En Banc: October 4, 2010

Status: Appeal numbers 08-15567 and 08-35526 are consolidated for rehearing en banc. Argued and submitted December 14, 2010

Members of En Banc Court: Kozinski, Schroeder, Rymer, Silverman, Graber, McKeown, Fisher, Paez, Rawlinson, Clifton, Bea

Subject Matter: Appeal of district court's denial of police officers' motion for summary judgment in 42 U.S.C. § 1983 action alleging the use of excessive force.

Holding: Not yet decided

Brooks v. City of Seattle, 08-35526

Three-Judge Panel Opinion: 599 F.3d 1018 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 911 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 30, 2010

Status: Appeal numbers 08-15567 and 08-35526 are consolidated for rehearing en banc. Argued and submitted December 14, 2010

Members of En Banc Court: Kozinski, Schroeder, Rymer, Silverman, Graber, McKeown, Fisher, Paez, Rawlinson, Clifton, Bea

Subject Matter: Appeal of district court's denial of police officers' motion for summary judgment in 42 U.S.C. § 1983 action alleging the use of excessive force.

Holding: Not yet decided

Montz v. Pilgrim Films & Television, Inc., 08-56954

Three-Judge Panel Opinion: 606 F.3d 1154 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 912 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 30, 2010

En Banc Opinion: 2011 WL 1663119 (9th Cir. May 4, 2011)

Date of En Banc Opinion: May 4, 2011

Status: Reversed the district court's dismissal of claim for breach of an implied contract by producer for failure to compensate a writer.

Members of En Banc Court: Kozinski, Schroeder, Reinhardt, O'Scannlain, Thomas, Wardlaw, Gould, Paez, Tallman, Bea, M. Smith

Subject Matter: Appeal of district court's judgment in a copyright infringement action.

Holding: The writer's claim under California law alleging a bilateral expectation that the writer would be compensated for use of the idea, was not preempted by the Copyright Act because it asserted rights qualitatively different from the rights protected by copyright.

Nunez-Reyes v. Holder, 05-74350

Three-Judge Panel Opinion: 602 F.3d 1102 (9th Cir. 2010)

Order Taking Case En Banc: 631 F.3d 1295 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 24, 2010

En Banc Opinion: 2011 WL 2714159 (9th Cir. July 14, 2011)

Date of En Banc Opinion: July 14, 2011

Status: Denied petition for review of the Board of Immigration Appeals' decision denying cancellation of removal. Mandate issued September 6, 2011

Members of En Banc Court: Kozinski, Schroeder, B. Fletcher, Pregerson, O'Scannlain, Thomas, Graber, Wardlaw, Callahan, M. Smith, Ikuta

Subject Matter: Petition for review by native and citizen of Mexico, from denial of application for cancellation of removal based on state drug convictions subsequently expunged under California law.

Holding: The court overruled the equal protection holding in *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000), which required treatment of expunged state simple drug possession convictions in the same manner as federal convictions expunged under the Federal First Offender Act. The court applied the new rule only prospectively.

Singh v. Holder, 08-70434

Three-Judge Panel Opinion: 602 F.3d 982 (9th Cir. 2010)

Order Taking Case En Banc: 623 F.3d 633 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 17, 2010

Status: Granted petition for review of the Board of Immigration Appeals' decision denying as untimely an alien's asylum application. Mandate issued August 10, 2011.

En Banc Opinion: 2011 WL 2418894 (9th Cir. June 17, 2011)

Date of En Banc Opinion: June 17, 2011

Members of En Banc Court: Kozinski, O'Scannlain, Graber, McKeown, Fisher, Gould, Paez, Rawlinson, Clifton, Callahan, Bea

Subject Matter: Petition for review by native and citizen of India, from denial of asylum, withholding of removal and relief under the Convention Against Torture.

Holding: The BIA legally erred by requiring Singh to provide evidence to corroborate his otherwise credible testimony concerning his arrival date for purposes of the one-year asylum bar.

Payne v. Peninsula School District, 07-35115

Three-Judge Panel Opinion: 598 F.3d 1123 (9th Cir. 2010)

Order Taking Case En Banc: 621 F.3d 1001 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 7, 2010

Status: Affirmed in part and reversed in part the district court's summary judgment dismissal of an action for failure to exhaust administrative remedies under the Individuals with Disabilities in Education Act ("IDEA"). Mandate issued August 25, 2011.

En Banc Opinion: 2011 WL 3211503 (9th Cir. July 29, 2011)

Date of En Banc Opinion: July 29, 2011

Members of En Banc Court: Kozinski, O'Scannlain, Silverman, Graber, McKeown, Fisher, Rawlinson, Bybee, Callahan, Bea, M. Smith

Subject Matter: Appeal of summary judgment in action regarding the education of an autistic elementary school child.

Holding: The IDEA's exhaustion requirement is not jurisdictional, and Payne's non-IDEA federal and state-law claims are not subject to the IDEA's exhaustion requirement.

Delgado v. Holder, 03-74442

Three-Judge Panel Opinion: 563 F.3d 863 (9th Cir. 2009)

Order Taking Case En Banc: 621 F.3d 957 (9th Cir. 2010)

Date of Order Taking Case En Banc: September 2, 2010

Status: Granted in part, denied in part, and remanded a petition for review of a decision of the Board of Immigration Appeals denying an application for asylum, withholding of removal and withholding under the Convention Against Torture.

En Banc Opinion: 2011 WL 3633695 (9th Cir. August 19, 2011)

Date of En Banc Opinion: August 19, 2011

Members of En Banc Court: Kozinski, Canby, Reinhardt, O'Scannlain, McKeown, Fisher, Bybee, Callahan, Bea, M. Smith, N.R. Smith

Subject Matter: Petition for review from the Board of Immigration Appeals' determination that an alien's conviction constituted a particularly serious crime, rendering him ineligible for asylum or withholding of removal.

Holding: This court has jurisdiction to review the BIA's determination that an alien was convicted of a "particularly serious crime" and is therefore ineligible for withholding of removal. For purposes of withholding, an offense need not be an aggravated felony to be a particularly serious crime. For asylum purposes, the Attorney General has the authority to designate offenses as particularly serious crimes through case-by-case adjudication as well as regulation.

Harrison v. Gillespie, 08-16602

Three-Judge Panel Opinion: 596 F.3d 551 (9th Cir. 2010)

Order Taking Case En Banc: 608 F.3d 1117 (9th Cir. 2010)

Date of Order Taking Case En Banc: June 18, 2010

Status: Affirmed district court's denial of 28 U.S.C. § 2254 habeas corpus petition. On May 10, 2011, the en banc court denied a petition for rehearing and filed an amended en banc opinion and dissent by Judge Reinhardt.

En Banc Opinion: 636 F.3d 472 (9th Cir. 2011)

Amended En Banc Opinion: 640 F.3d 888 (9th Cir. 2011)

Date of En Banc Opinion: February 15, 2011

Date of Amended En Banc Opinion: May 10, 2011

Members of En Banc Court: Kozinski, Reinhardt, Thomas, Graber, McKeown, Wardlaw, W. Fletcher, Fisher, Berzon, Clifton, M. Smith

Subject Matter: Appeal of district court's denial of habeas corpus petition seeking to strike the death penalty, where jury deadlocked at the penalty phase following conviction for murder.

Holding: Capital defendants do not have a per se constitutional right to inquire about the possibility that a penalty-phase jury has reached a preliminary decision against imposing the death penalty. The trial judge did not abuse discretion or subject petitioner to double jeopardy by declining to poll the jury before discharging it, and the State was not precluded from seeking the death penalty at the retrial of the penalty phase. In the

amended opinion, the en banc court deleted language that recognized Nevada state law permitting certain defendants to bifurcate the capital sentencing into distinct phases.

United States v. Aguila Montes De Oca, 05-50170

Three-Judge Panel Opinion: 553 F.3d 1229 (9th Cir. 2009)

Order Taking Case En Banc: 594 F.3d 1080 (9th Cir. February 3, 2010)

Date of Order Taking Case En Banc: February 3, 2010

Status: Vacated district court's sentence and remanded case to original three-judge panel for consideration of remaining issues.

En Banc Opinion: 2011 WL 3506442 (9th Cir. August 11, 2011)

Date of En Banc Opinion: August 11, 2011

Members of En Banc Court: Kozinski, Rymer, Silverman, W. Fletcher, Gould, Berzon, Rawlinson, Bybee, Callahan, M. Smith, N.R. Smith

Subject Matter: Appeal of criminal conviction for attempting to reenter the United States following deportation.

Holding: The en banc court overruled the holding in *Navarro-Lopez v. Gonzales*, 503 F.3d 1063 (9th Cir. 2007) (en banc) that the modified categorical approach doesn't apply when the crime of conviction is missing an element of the generic crime altogether. The court also overruled prior decisions regarding whether a conviction under California Penal Code § 459 qualifies as a generic burglary conviction.

Doody v. Schriro, 06-17161

Three-Judge Panel Opinion: 548 F.3d 847 (9th Cir. 2008)

Order Taking Case En Banc: 566 F.3d 839 (9th Cir. 2009)

Date of Order Taking Case En Banc: May 12, 2009

En Banc Opinion: 596 F.3d 620 (9th Cir. 2010); 2011 WL 1663551 (9th Cir. May 4, 2011)

Date of En Banc Opinion: February 25, 2010; May 4, 2011

Status: Reversed district court's denial of habeas corpus petition challenging a conviction based on nine murders. On 10/12/10 the Supreme Court granted the petition for a writ of certiorari, vacated the judgment, and remanded for further consideration in light of *Florida v. Powell*, 559 U.S. ___ (2010). On 5/4/11, the en banc court issued a decision holding that Powell does not alter the analysis or outcome of the case.

Members of En Banc Court: Kozinski, Schroeder, B. Fletcher, Pregerson, Reinhardt, Rymer, Kleinfeld, Thomas, Wardlaw, Tallman, Rawlinson

Subject Matter: Appeal of the district court's denial of petitioner's 28 U.S.C. § 2254 habeas corpus petition challenging his convictions for murder, armed robbery, burglary, and conspiracy.

Holding: The Arizona Court of Appeals unreasonably concluded that *Miranda* advisements made to defendant were clear and understandable. The state court made an unreasonable determination that defendant voluntarily confessed, and unreasonably applied clearly established federal law in failing to consider the totality of the circumstances to determine whether defendant's will was overborne by the interrogation. The coerced confession was inadmissible and the error was not harmless. Following remand by the Supreme Court in light of *Florida v. Powell*, the en banc court held that *Powell* did not alter the analysis or outcome of this case because

the facts differed markedly from those in *Powell*. The en banc court held that it continued in its view that the Miranda warnings provided to Doody did not clearly convey his rights to an attorney, and that the Arizona Court of Appeals unreasonably applied Miranda in ruling to the contrary.

Richter v. Harrington, 06-15614

Three-Judge Panel Opinion: 521 F.3d 1222 (9th Cir. 2008)

Order Taking Case En Banc: 548 F.3d 1236 (9th Cir. 2008)

Date of Order Taking Case En Banc: November 10, 2008

En Banc Opinion: 578 F.3d 944 (9th Cir. 2009); 2011 WL 2674832 (9th Cir. July 11, 2011)

Date of En Banc Opinion: August 10, 2009; July 11, 2011

Status: Reversed district court's denial of habeas corpus petition. February 24, 2011: the Supreme Court reversed and remanded this court's judgment. July 11, 2011: Following remand, petitioner's claims remaining after Supreme Court reversal are denied. Mandate issued August 9, 2011.

Members of En Banc Court: Kozinski, Reinhardt, O'Scannlain, Kleinfeld, Silverman, Wardlaw, Fisher, Paez, Bybee, M. Smith, Ikuta

Subject Matter: Appeal of the district court's denial of petitioners' 28 U.S.C. § 2254 habeas corpus petitions challenging jury convictions for murder, attempted murder, robbery and burglary.

Holding: Following remand by Supreme Court, the en banc court held the state court did not unreasonably apply *Strickland v. Washington*, 466 U.S. 668 (1984), *Brecht v. Abrahamson*, 507 U.S. 619 (1993), or *Brady v. Maryland*, 373 U.S. 83 (1963).

Sarei v. Rio Tinto, PLC, 02-56256 / 02-56390

Three-Judge Panel Opinion: 487 F.3d 1193 (9th Cir. 2007)

Order Taking Case En Banc: 499 F.3d 923 (9th Cir. 2007)

Date of Order Taking Case En Banc: August 20, 2007

En Banc Opinion: 550 F.3d 822 (9th Cir. 2008)

Date of En Banc Opinion: December 16, 2008

Status: Remand for consideration, in the first instance, of whether exhaustion of local remedies was required, in dismissal of Alien Tort Statute ("ATS") action. On 9/29/09 the en banc court granted defendants' motion to reactivate the appeals and ordered supplemental briefing. Argued and submitted September 21, 2010. On 10/26/10 the en banc court referred the case to Judge Edward Leavy to explore the possibility of mediation. On 2/11/11 the case was returned to the en banc court and is under submission.

Members of En Banc Court: Schroeder, Pregerson, Reinhardt, Kleinfeld, Silverman, McKeown, Berzon, Rawlinson, Callahan, Bea, Ikuta

Subject Matter: Appeal of the district court's dismissal of a class action complaint brought by current and former residents of the island of Bougainville in Papua New Guinea against a mining company under the Alien Tort Claims Act.

Holding: Certain ATS claims are appropriately considered for exhaustion under both domestic prudential standards and core principles of international law. Defendant bears the burden to plead and justify an exhaustion requirement, including the availability of

local remedies.